

**BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA**

**DOCKET NO. 2012-221-C**

Harper, Lambert & Brown, P.A.,  
Complainant/Petitioner v.  
Windstream South Carolina, LLC,  
Respondent

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**ANSWER OF WINDSTREAM SOUTH  
CAROLINA, LLC**

Respondent Windstream South Carolina, LLC (“Windstream”), hereby answers the Complaint of Petitioner Harper, Lambert & Brown, P.A. (“Petitioner”). Petitioner filed its Complaint with the Commission on or about May 31, 2012.

1. The Complaint alleged the following under the heading “Concise Statement of Facts / Complaint”:

This firm received a bill from Windstream for telephone use that was much higher than normal. Upon reviewing the bill we discovered thousands of dollars in unauthorized international long distance calls that were NOT placed from this office.

**FOR A FIRST DEFENSE  
(General Denial)**

2. Windstream admits that Petitioner received a bill from Windstream. With respect to the charges contained therein, Windstream craves reference to the actual bill.

3. With respect to the allegation regarding “thousands of dollars in unauthorized long distance calls that were NOT placed from this office,” Windstream denies the allegation that the calls in question were not placed from Petitioner’s office. Windstream admits that Petitioner characterizes the calls at issue as “unauthorized,” but denies that Windstream bears any responsibility with respect to any such unauthorized calls.

**FOR A SECOND DEFENSE**  
**(Lack of Jurisdiction)**

4. Under the heading “Relief Requested,” the Complaint requested that “Windstream should unconditionally credit our firm’s bill for the unauthorized fraudulent charges immediately.”

5. As alleged in the Complaint, Petitioner claims that Windstream is responsible for “thousands of dollars in unauthorized international long distance calls . . . .” and seeks to have the Commission require Windstream to credit its bill in the amount of those unauthorized charges.

6. The Commission has jurisdiction only over intrastate communications (those communications that originate and terminate within the State of South Carolina).

7. 47 U.S.C. Section 152(a) makes clear that the Federal Communications Act (the “Act”) applies to interstate and international communications and grants the Federal Communications Commission (FCC) exclusive jurisdiction over those communications.

8. “Purely intrastate communications, on the other hand are to be regulated by the states. 47 U.S.C. § 152(b).” National Ass’n of Regulatory Utility Com’rs v. FCC, 746 F.2d 1492, 1498 (D.C. 1984).

9. Accordingly, § 58-9-50 of the South Carolina Code of Laws confirms the purely intrastate nature of the Commission’s jurisdiction, providing that “[n]o provision of Articles 1 through 13 of this chapter shall apply or be construed to apply to commerce among the several states of the United States, except in so far as such application may be permitted under the provisions of the Constitution of the United States and the Acts of Congress.”

10. Furthermore, the international nature of the calls in question determines the FCC’s exclusive jurisdiction over this matter, regardless of the fact that some of the telephone

equipment involved in this case is located in South Carolina. See United States v. Southwestern Cable Co., 392 U.S. 157, 168-9 (1968).

11. Indeed, the Complainant has recognized the jurisdiction of the FCC over this matter, referencing that the Complainant “located online Federal Communications Commission (FCC) Complaint Form, submitted Complaint Online, and our FCC Submission Complaint Confirmation is 2000B, Ref. No. 12-C00385414.”

12. As such, the Commission lacks jurisdiction over the Complaint, pursuant to S.C.R.C.P. Rule 12(b)(1), and the authority cited above.

**FOR A THIRD DEFENSE  
(Failure to State Facts Sufficient to Constitute a Claim)**

13. Because the Commission lacks jurisdiction over the calls that are the subject of this dispute, the Complaint also fails to state facts sufficient to constitute a claim upon which this Commission is empowered to grant relief. Specifically, the Commission possesses no authority to “credit” charges assessed to the Complainant for international calls.

14. Commission Rule 103-623 allows “Adjustment of Bills” only to the extent that the rates and charges on a customer bill are at odds with that “prescribed in the schedules of such telephone utility applicable thereto then filed in the manner provided in Title 58 of the South Carolina Code of Laws . . .”

15. Windstream’s intrastate tariff on file with the Commission contains no rates for international calls, but only intrastate calls.

16. Accordingly, the Commission cannot adjust Windstream’s international rates, and the Complaint fails to state facts upon which this Commission can provide relief.

**FOR A FOURTH DEFENSE**  
**(Another action pending between the same parties for the same claim)**

17. As referenced in Petitioner's Complaint and above, the Petitioner has filed a complaint against Windstream with the FCC in connection with the facts underlying this Complaint.

18. Accordingly, there is another action pending between the parties for the same claim, and the Complaint must be dismissed pursuant to S.C.R.C.P. 12(b)(8).

**FOR A FIFTH DEFENSE**  
**(Contractual Provisions)**

19. In the alternative, Windstream's Contract with Petitioner, as well as NuVox's tariffs incorporated by reference into the Contract between the parties, make clear that Petitioner, and not Windstream, is responsible for all costs incurred as a result of any unauthorized use of the network and specifically Petitioner's consumer premises equipment (CPE).

20. As such, the terms of Windstream's agreement with Petitioner make clear that Windstream is not responsible for any of the losses alleged by Petitioner.

## **CONCLUSION**

Based upon the forgoing, the Commission should dismiss the Complaint filed against Windstream.

Respectfully submitted,

s / John J. Pringle, Jr.  
John J. Pringle, Jr  
Ellis, Lawhorne & Sims, P.A.  
1501 Main Street, 5<sup>th</sup> Floor  
P.O. Box 2285  
Columbia, South Carolina 29202  
Telephone: (803) 343-1270  
Facsimile: (803) 799-8479  
[jpringle@ellislawhorne.com](mailto:jpringle@ellislawhorne.com)

Attorneys for Windstream South Carolina, LLC

Columbia, South Carolina  
July 13, 2012

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION OF**  
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Complainant/Petitioner v.  
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**CERTIFICATE OF SERVICE**

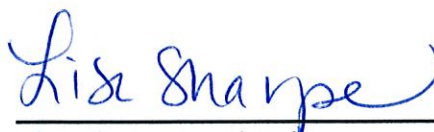
This is to certify that I have caused to be served this day, one (1) copy of the **Answer of Windstream South Carolina, LLC** via electronic mail and by placing a copy of same in the care and custody of the United States Postal Service (unless otherwise specified), with proper first-class postage affixed hereto and addressed as follows:

**VIA ELECTRONIC AND 1<sup>ST</sup> CLASS MAIL SERVICE**

Courtney Dare Edwards, Esq.  
Nanette S. Edwards, Esq.  
Office of Regulatory Staff  
Legal Department  
1401 Main Street, Suite 900  
Columbia SC 29201

**VIA ELECTRONIC AND 1<sup>ST</sup> CLASS MAIL SERVICE**

Cynthia Buck Brown, Esquire  
Harper, Lambert & Brown, P.A.  
Post Office Box 908  
Greenville SC, 29601

  
\_\_\_\_\_  
Lisa Sharpe, Paralegal

July 13, 2012  
Columbia, South Carolina